

session his hand, till a new security were drawn ; and, when it is demanded up, the clerk claimed to retain the 20th penny, as the consignation money due to him by his office, which amounted to no less than 1100 merks.

ALLEGED for the Creditors,—There was no law for such a deduction ; it was not a custom, but a *corruptela* ; and was an exorbitant demand for a few days' custody.

ANSWERED,—Our ancient customs were a part of our law ; and this consignation-money had never been controverted, but usually divided betwixt the debtor and creditor, each of them bearing a halfpenny in the pound : and it was but just ; for they run the risk of bad money, and of its being stolen.

The Lords found consignation-money due, but to be exacted with discretion, and not to be screwed to the full ; and therefore modified the same here, and restricted it to 400 merks.

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1712. February 29. CHARLES JACK *against* EDWARD LAING.

CHARLES Jack against Edward Laing, skipper in Leith, his son-in-law ; who pursuing for his tocher, Charles ALLEGED,—It was destined to his daughter in liferent, and the heirs of the marriage in fee.

ANSWERED,—My wife consents to the uplifting ; and my bairns are only heirs of provision, and I am fiar of the sum.

And the Lords having found he might uplift it, Charles protested ; though his daughter had taken herself to her husband's security.

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1712. June 12. JOHN PATERSON *against* JAMES LESLY.

JAMES Lesly, brewer at Gravesend, having taken a brewery, malt barn, and lofts, from Robertson, for 600 merks of yearly duty ; and the lands, by disposition, coming to John Paterson ; he, by Walter Murray, his factor, pursues Lesly for the rent, before the commissaries of Edinburgh. Who, craving allowance for some reparations, and for his damages sustained through the said brewery's insufficiency, being neither water nor wind-tight, by which his victual was exceedingly spoiled, and offered to liquidate the same ; they refused to admit it in this process, but reserved him action as accords. Of which decret he craved SUSPENSION, on thir grounds,—That I wanted the use of the houses for which the hire was stipulated to be paid ; and, both in equity and common law, you are obliged to keep the brewery in repair. And the Commissaries were injurious in refusing my compensation, and denying me retention for my evident damages : for, *L. 19, sec. 1, D. Locati*, says well, *Sî quis dolia vitiosa licet ignarus locaverit, deinde vinum effluerit, tenebitur in id quod interest ; nec ignorantia ejus erit excusata, nam, sive scisti sive ignorasti, pensionem non petes*. And though compensation be not receivable after sentence, yet here it is most competent ; for it was proponed, and most unjustly repelled. Likeas, they have summarily